

**Otto Cerni Cabinet Shop, Inc. and Ronald Kincaid.**  
Case 7-CA-29857

May 8, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

On May 31, 1990, the National Labor Relations Board issued a Decision and Order ordering Otto Cerni Cabinet Shop, Inc., to, inter alia, make whole Ronald Kincaid for loss of wages and other benefits resulting from his layoff in violation of Section 8(a)(3) and (1) of the National Labor Relations Act.<sup>1</sup> On September 4, 1991, the United States Court of Appeals for the Sixth Circuit entered a judgment enforcing the Board's Order.

A controversy having thereafter arisen over the amount of backpay due the discriminatee, on December 30, 1991, and January 8, 1992, respectively, the Regional Director for Region 7 issued a compliance specification and notice of hearing and an errata thereto, alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification and errata, the Respondent has failed to file an answer.

By letter dated January 27, 1992, the Regional attorney advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by February 10, 1992, a Motion for Default Judgment would be sought. Subsequently, on March 5, 1992, the compliance specification and notice of hearing, the errata thereto, and the January 27, 1992 letter were again served on the Respondent, along with a second letter from the Regional attorney requesting an answer by March 19, 1992. The Respondent's only response was a letter dated March 17, 1992, advising that the Respondent was in the process of filing for bankruptcy.

On April 3, 1992, the General Counsel filed with the Board a Motion to Transfer Case to the Board and for Default Summary Judgment on the pleadings, with exhibits attached. On April 9, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion and in the compliance specification and errata are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on the Motion for Summary Judgment**

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

Further, it is well established that Board proceedings fall within the exception to the automatic stay provision of the Federal bankruptcy code for proceedings by a governmental unit to enforce its police or regulatory powers, and that the filing of a bankruptcy petition does not deprive the Board of its jurisdiction to resolve unfair labor practices. See, e.g., *Cardinal Services*, 295 NLRB 933 fn. 2 (1989), and cases cited therein.

According to the uncontroverted allegations of the Motion for Default Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net backpay due the discriminatee is as stated in the compliance specification and we will order payment by the Respondent to the discriminatee.

**ORDER**

The National Labor Relations Board orders that the Respondent, Otto Cerni Cabinet Shop, Inc., New Boston, Michigan, its officers, agents, successors, and assigns, shall make whole the individual named below, by paying him the amounts following his name, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws:

Ronald Kincaid

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<sup>1</sup> 298 NLRB No. 93.